Supreme Court, U.S.
FILED

931685 JAN 11 1994

No. OFFICE OF THE CLERK

In the Supreme Court of the United States

October Term, 1993

Jeffrey D. Hebert

Petitioner

v.

Jesse Brown

Respondent

Petition for: Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

Petition for Writ of Certiorari

Jeffrey D. Hebert
P.O. Box 640163
Kenner, LA 70064
No Phone Number
Pro Se

41pp

QUESTIONS PRESENTED

1. Has the appellant ever had another case in this court and if so, state the name and number of each case.

2. Did the court decide or fail to take into account any facts? If so, what facts?

3. Did the trial court apply the wrong law? If so, what law should be applied?

4. Did the trial court fail to consider important grounds for relief? If so, what reasons?

5. Are there other reasons why the trial courts decision was wrong? If so, what reasons?

6. What action (relief) do you want the court to take in this case?

7. Do you want to argue before the court in person? What are the reasons why argument will aid the court?

LIST OF PARTIES

The parties to the proceedings below are fully identified in the caption of the case.

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TABLE OF AUTHORITIES

1. Murphy v. Derwinski
   1 Vet App 78 (1990) 2a

2. McNutt v. G.M.A.C.
   298 US 178 (1936) 8a

3. Bethea v. Derwinski
   2 Vet App 252 (1992) 8a

4. Butler v. Derwinski
   960 F.2d (Fed. Cir. 1992) 9a

5. Christianson v. Colt Industries Operating Corp.
   486 U.S. 800, 818 (1988) 9a

6. Machado v. Derwinski
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7. Dudley v. Derwinski
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Statutes:

1. 38 U.S.C. § 5110(A), 7103(A), 7266(A) 2, 3a

2. 38 C.F.R. § 3.400(R) 2, 3a

3. 38 U.S.C. § 5107(A) 2, 2a

4. 38 C.F.R. § 3.157 2

5. 38 U.S.C. § 7266(A) (formerly 38 U.S.C. § 4066(A)) 2, 8a

6. 28 U.S.C. § 2403(A) 2, 6, 23a

7. 28 U.S.C. § 451 .....3, 6, 23a

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

JEFFREY DAVID HEBERT

Petitioner

v.

JESSE BROWN

Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUT

Petitioner Jeffrey David Hebert respectfully prays that writ of Certiorari

issue to review the judgement and opinion of The United States Court of Appeals for The Federal Circut

OPINIONS BELOW

1. ..The opinion of the Board of Veterans Appeals Docket #92-53 708 is reprinted in the Appendix here to page 1a

2. The opinion of The Court of Appeals for United States Court of Veterans Appeals Docket #92-1360 is reprinted inthe Appendix hereto page 6a

3. The opinion of The United States Court of Appeals for the Federal Circut Docket #93-7069 is reprinted in the Appendix here to page 8a

JURISDICTION

Jurisdiction is the matter in question.

STATUTES INVOLVED

1. 38 U.S.C. §§ 5110(A), 7103 (A), 7266(A)

2. 38 C.F.R. § 3.400(R)

3. 38 U.S.C. § 5107(A)

4. 38 C.F.R. § 3.157

5. 38 U.S.C. § 7266(A) (formerly 38 U.S.C. 4066(A))

6. 28 U.S.C. § 2403(A)

7. 28 U.S.C. § 451

STATEMENT OF THE CASE

Jeffrey David Hebert seeks review of an order of the United States Court of Appeals for the Federal Circut which has upheld the decision of the (C.V.A.) Court of Veterans Appeals. For dismissing his appeal for lack of jurisdiction because his notice of appeal to the Board of Veterans Appeals was filed more than 120 days after the date of mailing of the decision of the Board of Veterans Appeals (B.V.A.).

In a decision dated July 2, 1992, the B.V.A. denied Mr. Hebert's claim for

entitlement to an earlier effective date for his 100 percent disability rating. On November 12, 1992, 133 days after the B.V.A. decision was mailed, he filed a notice of appeal with the C.V.A.

The C.V.A. issued an order, dated November 18, 1992, mandating that Mr. Hebert show cause why his appeal should not be dismissed for lack of jurisdiction because he had not filed a notice of appeal within 120 days after the B.V.A. decision was mailed. The order noted that Mr. Hebert had submitted a copy of the B.V.A. decision along with his notice of appeal to the C.V.A.

In an order, dated December 29, 1992, The C.V.A. dismissed Mr. Heberts's case for lack of jurisdiction because he had failed to file a timely notice of

appeal. The Clerk of the C.V.A. entered the judgement on January 26, 1993. On March 2, 1993, Mr. Hebert field his notice of appeal. On April 19, 1993, The Clerk of the C.V.A. forwarded Mr. Heberts's notice of appeal to the United States Court of Appeals for the Federal Circut. On June 4, 1993, Mr. Hebert filed an informal brief.

On October 15, 1993 the United States Court of Appeals for the Federal Circut entered a judgement to affirm the C.V.A.'s decision.

REASONS FOR GRANTING THE WRIT

The constitutionality of an Act of Congress was drawn into question.

In any proceeding in this court wherein the constitutionality of an Act of Congress is drawn into question, and The United States or any department, office, agency, officer, or employee thereof is not a party, the initial pleading, motion or paper filed in this court shall recites that 28 U.S.C. § 2403(A) may be applicable, and the document must be served on the solicitor general, department of Justice Washington, D.C. 20530. In a proceeding from any court of The United States, as defined by 28 U.S.C.§ 451, the initial pleading, motion, or paper shall also state whether or not that court, pursuant to 28 U.S.C. § 2403(A) has certified to the Attorney General the fact that the constitutionality of an Act of Congress was drawn into question.

CONCLUSION

For these various reasons, this petition for Certiorari should be granted.

Respectfully submitted

Jeffrey David Hebert
P.O. Box 640163
Kenner, Louisiana 70064
No Phone
Pro Se

APPENDIX

Document

Page

Decision of the Board of Veterans Appeals, Date July 2, 1992 ..... 1a

Notice of Appeal to the United States Court of Veterans Appeals, stamped filed on November 12, 1992 ..... 4a

Order of the Court of Veterans Appeals, dated November 18, 1992 ..... 6a

Order of the Court of Veterans Appeals, dated December 29, 1992 ..... 8a

Informal brief filed with the United States Court of Appeals for the Federal Circuit, dated May 24, 1993 ..... 10a

Respondent - Appellee's Informal Brief Statement of Case, dated June 17, 1993 14a

Entry of Judgement by the United States Court of Appeals for the Federal Circuit, dated October 15, 1993 ..... 18a

..Revised informal brief which I, Jeffrey D. Hebert, petitioner would like to submit. 20a

BOARD OF VETERANS APPEALS

WASHINGTON D.C. 20420

DOCKET NO. 92-53 708) Date: 7-2-92

THE ISSUE

Entitlement to an effective date for an award of 100 percent for Schizophrenia prior to June 1, 1989.

WITNESS AT HEARINGS ON APPEAL

APPELLANT

ATTORNEY FOR THE BOARD

J.E. Ormond, Counsel

CONTENTIONS

The veteran contends that the effective date of his award should be earlier that June 1, 1989

REASON AND BASES FOR FINDINGS AND CONSLUSIONS

The threshold question to be answered in this case is whether a well-grounded claim, that is, one which is plausible or meritorious. If he has not, his appeal must fail. 38 U.S.C. § 5107(a); Murphy v. Derwinski, 1 Vet App. 78 (1990). The Board finds that this claim is indeed well grounded and that the record is adequately developed for a

fair resolution of the appellate issue.

CONCLUSION OF LAW

The criteria for an effective date prior to June 1, 1989, for an award of a total schedular rating for schizophrenia have not been met. 38 U.S.C. §§ 5110(a), 7103(a), 7266(a); 38 C.F.R.§ 3400(r)

ORDER

Entitlement to a schedular disability evaluation of 100 percent prior to June 1, 1989 is denied.

Board of Veterans' Appeals

Washington, D.C. 20420

C.A. Quarles, M.D.

C.P. Russell

Jack W. Blasingame

Notice of Appeal to the U.S. Court of Veterans Appeals Stamped Filed on November 12, 1992

Sirs,

I received a B.V.A. decision on or about 7-14-92 which I promptly submitted a notice of disagreement to the Department of Veterans Affairs, Regional Office, 701 Loyola Avenue, New Orleans, Louisiana 70113.

Then I waited for a reply which I received on 10-25-92. So, then I went to the same office and was told they could

no longer help me in this matter. That I would have to submit a notice of appeal to the United States Court of Veterans Appeals, 625 Indiana Ave., N.W., Suite 900, Washington, D.C., 20004.

So at this time I wish to appeal the B.V.A. decision to the court of veterans appeals to award entitlement from August of '79 to present.

My name is Jeffery David Hebert, P.O. Box 640163, Kenner, Louisiana 70064.

My Social Security Number is: 435-88-3049

My Claim Number is: C-29-637-561

Sincerely Yours,

Jeffery David Hebert

UNITED STATES COURT OF VETERANS APPEALS

JEFFERY D. HEBERT	)	Date: 11-18-92
Appellant	)	Docket No.
	)	92-1360
V.	)	VA file No.
	)	29-637-561
ANTHONY J. PRINCIPI	)	
Appellee	)	
Acting Secretary of	)	
Veterans Affairs	)	

Ordered that the appellate, within 20 days after the date of this order, shown

cause why this appeal should not be dismissed for lack of justification. It is further

Ordered that proceedings on this appeal are stayed pending further order of the court.

For the Court

Robert F. Comeau

Clerk of Court

UNITED STATES COURT OF VETERANS APPEALS

JEFFREY D. HEBERT	)	Date: 12-29-92
Appellant	)	Docket Nos.
V.	)	92-1360
ANTHONY J. PRINCIPI	)	93-7069
Acting Secretary of	)	
Veterans Affairs	)	
Appellee	)	

ORDER

The ultimate burden of establishing jurisdiction rests with appellant McNutt V. G.M.A.C., 298 U.S. 178 (1936); Betha V. Derwinski, 2 Vet. App. 252 (1992) to be timely filed under Rule 4 of this Courts Rules of Practice and Procedure and Precedents construing 38 U.S.C. § 7266(a) (formerly 38 U.S.C. § 4066(a)),

an N.O.A. must be received by the court within 120 days after the B.V.A. decision is mailed to an appellant. See Butler V. Derwinski, 960 F.2d 139 (Fed. Cir. 1992) This Court's jurisdiction derives exclusively beyond that permitted by the law. See Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 818 (1988); Machado v. Derwinski, 928 F.2d 389 (Fed. Cir. 1991); Dudley v. Derwinski, 2 Vet. App. 602 (1992).

On consideration of the foregoing, it is

Ordered that this appeal is dismissed for lack of jurisdiction.

By the Court

Donald L. Ivers

Associate Judge

THE UNITED STATES OF APPEALS
FOR THE FEDERAL CIRCUIT

HEBERT v. DVA
Docket No. 93-7069

Please enter my appearance (select one):

_X_ Pro Se
____ As counsel for: Jeffrey David Hebert

I am, or the party I respresent is (select) one:

____ Petitioner	___ Respondent
____ Amicus Curiae	_X_ Appellant
____ Appellee	___ Intervenor

As amicus curiae or intervenor, this aprty supports (select one):

_X_ Petitioner or appellant
____ Respodent or appellent

Address and telephone are:

Name:	Jeffrey David Hebert
Address:	P. O. Box 640163
City, State & Zip:	Kenner, LA 70064
Telephone:	(504) None

J. D. Hebert
Signature of Pro Se or Counsel

May 24, 1993

IN THE UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

HEVERT	)	DATE:
V.	)	5-24-93
DVA	)	Docket No:
	)	93-7069

INFORMAL BRIEF OF APPELLANT

1. Has the appellant ever had another case in this court? No. If so, state the name and number of each case.

2. Did the trial court incorrectly decide or fail to take into account any facts? Yes. If so, what facts?

I feel the VARO/NOLA was at fault in not timely forwarding my appeal to the court of Veterans Appeals. I went into

their office 12 days after I received the BVA's decision and request my claim go to the Court of Veterans Appeals. After the BVA held on it for a while they sent it to the court, but it was too late, the 120 days had already passed.

3. Did the trial court apply the wrong law? No. If so, what law should be applied?

None that I know of.

4. Did the trial court fail to consider important grounds for relief? Yes. If so, what grounds?

Refer to #2.

5. Are there other reasons why the trial court's decision was wrong? No. If so, what reasons?

6. What action (relief) do you want the court to take in this case?

To issue a decision in my favor or send the case back (remand) for further proceeding before the board, commission, or court.

7. Do you want to argue before the court in person? No. What are the reasons why argument will aid the court?

Jeffrey David Hebert

Apellants Signature

Pro se

IN THE UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

JEFFREY D. HEBERT	)	Date: 6-17-93
Claimant - Appellant	)	Docket No.
	)	93-7069
v	)	
	)	
JESSE BROWN	)	
Secretary of Veterans	)	
Affairs	)	
Respondent Appellee	)	

Respondent - Appellee's Informal Brief

1. Has the appellant ever had another case in this court? No. If so, state the name and number of each case.

We are not aware that the petitioner has had another case before this court.

2. Did the trial court incorrectly decide or fail to take into account any facts? No. If so, what facts?

3. Did the trial court apply the wrong law? No. If so, what law should be applied?

4. Did the trial court fail to consider important grounds for relief? No. If so, what grounds?

5. Are there other reasons why the trial court's decision was wrong? No. If so, what reasons?

6. What action (relief) do you want the court to take in this case?

The court should affirm the final decision of the C.V.A. dated December 29, 1992

7. Do you want to argue before the court in person? No. What are the reasons why argument will aid the court?

Respectfully Submitted,

Stuart E. Schiffer
Acting Assistant Attorney General

David M. Cohen
Director

Thomas W. Petersen

Assistant Director

James W. Poirier

Attorney

Commercial Litigation Branch

Civil Division

Department of Justice

ATTN: Classification Branch

2nd. Floor, Todd Building

Washington, D.C.

Telephone: (202) 307-6289

Attorneys for Respondent-Appellee

IN THE UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

JEFFREY D. HEBERT	)	DATE: 10-15-93
Claimant - Appellant	)	Docket No.
	)	93-7069
v	)	
	)	
JESSE BROWN	)	
Secretary of Veterans	)	
Affairs	)	
Respondent Appellee	)	

Judgement

On appeal from the:

United States Court of Veterans Appeals

In Case No. 92-1360

This case having been heard and consid-

ered it is ordered and Adjudged:

Per Curiam (Nies, Chief Judge Mayer and Plager, Circut Judges)

Affirmed

Entered by order of the court

Rancis X. Gindhart

Clerk

THE UNITED STATES OF APPEALS
FOR THE FEDERAL CIRCUIT

HEBERT v. DVA
Docket No. 93-7069

Please enter my appearance (select one):

_X_ Pro Se
____ As counsel for: Jeffrey David Hebert

I am, or the party I respresent is (select) one:

____ Petitioner ___ Respondent
____ Amicus Curiae _X_ Appellant
____ Appellee ___ Intervenor

As amicus curiae or intervenor, this aprty supports (select one):

_X_ Petitioner or appellant
____ Respodent or appellent

Address and telephone are:

Name:	Jeffrey David Hebert
Address:	P. O. Box 640163
City, State & Zip:	Kenner, LA 70064
Telephone:	(504) None

J. D. Hebert
Signature of Pro Se or Counsel

IN THE UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

JEFFREY D. HEBERT	)	Docket No.
Claimant - Appellant	)	93-7069
	)	
v	)	
	)	
JESSE BROWN	)	
Secretary of Veterans	)	
Affairs	)	
Respondent Appellee	)	

Informal Brief of Appellant

1. Has the appellant ever had another case in this court? No. If so, state the name and number of each case.

2. Did the trial court incorrectly decide or fail to take into account any facts? Yes. If so, what facts?

I feel the VARO/NOLA was at fault in not timely forwarding my appeal to the court of Veterans Appeals. I went into their office 12 days after I received the BVA's decision and request my claim go to the Court of Veterans Appeals. After the BVA held on it for a while they sent it to the court, but it was too late. The 120 days had already passed. They sent it to the wrong court. Also, in good faith I was letting the VARO/NOLA file my appeals with the correct board, courts or commissions. Because I was on so much medication I was unable to handle it for myself. My medical record should verify this.

3. Did the trial court apply the wrong law? Yes. If so, what law should be applied?

Rules 27(e) 3 and 9 of
Rules of Practice
before the
United States Court of Appeals
for the Federal Circuit

4. Did the trial court fail to consider important grounds for relief? Yes. If so, what grounds?

Rule 29.4(b) 28 USC §2403(a)
28 USC § 451

5. Are there other reasons why the trial court's decision was wrong? Yes. If so, what reasons?

I have been stated to have been 100% service connected, disable since '79 - '80 by a Dr. Valle, employed by the V.A.

Hospital. This document should be in my medical record. Also, I've been unemployed since my discharge

6. What action (relief) do you want the court to take in this case?

To issue a decision in my favor or send the case back (remand) for further proceeding before the board, commission, or court.

7. Do you want to argue before the court in person? No. What are the reasons why argument will aid the court?